

ORIGINAL

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA  
DUBLIN DIVISION

FILED  
U.S. DISTRICT COURT  
AUGUSTA DIV.

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CLERK  
SO. DIST. OF GA.

WILLIAM H. CARTER  
Plaintiff

vs

NCO FINANCIAL SYSTEMS  
Defendant

Case No: CV 311-107

**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S PARTIAL  
MOTION TO DISMISS AND SUPPORTING MEMORANDUM OF LAW**

Plaintiff, William H. Carter hereby opposes the partial motion to dismiss entered by defendant on October 18, 2012. *See* Dkt. No. 37, and requests this Honorable Court deny said motion.

**I. INTRODUCTION**

On October 18, 2012 Defendant, NCO FINANCIAL SYSTEMS, (NCO) filed a motion to dismiss the FDCPA claim included in Plaintiff's amended complaint filed October 1, 2012 on the grounds the claim is time barred by the statute of limitations. *See* Dkt. No. 37. Although many courts have held that the 1 yr statute of limitations applies to the FDCPA, others have held that the statute of limitations runs from the date of discovery. *See Mangum v Action Collection Service, Inc.*, 575 F. 3d 935 (9<sup>th</sup> Cir. 2009). *the court held that, because the FDCPA is silent on the issue, the court should apply the Ninth Circuit's usual presumption that federal statutes of limitation begin to run on discovery of the injury.*

Other cases which have held to the presumption of the 9<sup>th</sup> Circuit: *Greenfield v Kluever & Platt, L.L.C.*, 2010 WI. 604830 (N.D. Ill. Feb. 16, 2010); *Kelly v Wolpoff & Abramson, L.L.P.*, 2007 WI. 2381536 (D. Colo. Aug. 17, 2007); *Shah v Collecto, Inc.*, 2005 WI. 2216242 (D. Md. Sept. 12, 2005).

## II. BACKGROUND

Plaintiff originally filed this action on November 21, 2011. On October 1, 2011 Plaintiff filed his second amended complaint adding a cause of action under the FDCPA (See Dkt. No. 32). This cause of action was a direct result of evidence provided by Defendant during discovery in this instant action. The evidence clearly showed that Defendant had called Plaintiff's cell phone a total of 105 times and as many as 4 times a day between November of 2009 and April of 2010. While Plaintiff had been fully aware that there were harassing calls being placed to his cell phone during that time period he had no knowledge of who was placing the calls until Defendant provided him documentation identifying NCO as the caller. Because the calls came into Plaintiff's cell phone with "UNKNOWN" status on the caller id., and the cell phone was on a plan whereby Plaintiff was required to "pay for minutes", Plaintiff did not answer and could not have known the identity of the caller. Plaintiff had simply assumed the calls were from a telemarketer seeking to use his minutes for their unsolicited marketing.

To date there has been no evidence other than that provided by Defendant which would have or could have identified the caller who harassed the Plaintiff by continually dialing his cell phone with blocked caller id.

## III. CONCLUSION

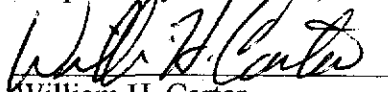
While the FDCPA is silent on the issue of the commencement of the statute of limitations on the violations, Plaintiff does not think, and the 9<sup>th</sup> Circuit apparently agrees, that Congress

enacted the FDCPA to give collectors or creditors carte blanche to violate a consumers rights with impunity so long as the consumer is unaware and does not find out before they can hide behind a time limitation on said violations. Since the violations cited in Plaintiff's amended complaint of October 1, 2012 (Dkt. No. 32), could not have been discovered by Plaintiff until 2012, the 9<sup>th</sup> Circuit's presumption of "time of discovery" would nullify Defendant's claim of "time barred" actions and it's R. Civ. P. 12(b)(6) motion before this Court.

**WHEREFORE**, because Defendant has not shown that Plaintiff has failed to state a claim upon which relief may be granted, Plaintiff respectfully requests this Honorable Court deny Defendant's Partial Motion to Dismiss and Supporting Memorandum of Law and allow Plaintiff's claim to move forward to trial on the merits. In the alternative, if the Court determines Plaintiff has failed to state a claim, Plaintiff asks the Court to grant leave to amend the complaint.

Dated: November 4, 2012

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "William H. Carter", is written over a horizontal line.

William H. Carter

311 Bethel Street

Eastman, Georgia 31023

478-374-4132

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SOUTHERN DISTRICT OF GEORGIA  
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**WILLIAM H. CARTER**  
**Plaintiff**

**vs**

**NCO FINANCIAL SYSTEMS**  
**Defendant**

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**CERTIFICATE OF SERVICE**

This is to certify that I have mailed copies of the above document(s) by first class mail USPS to all parties listed below.

Dated: 11-6-2012

Respectfully Submitted,

William H. Carter  
William H. Carter  
311 Bethel Street  
Eastman, Georgia  
31023

**NCO FINANCIAL SYSTEMS, INC.**  
**C/O Glenn E. Jones**  
**Hall, Booth, Smith & Slover, P.C.**  
**3528 Darien Highway, Suite 300**  
**Brunswick, Georgia 31525**

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311 Bethel St.  
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30903

